**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE S.SIRI JAGAN**

**FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928**

**OP.No. 24078 of 2001(N)**
**----------**

**PETITIONER:**
**----------**
**B.SAROJINI**
**AGED ABOUT 71 YEARS**
**W/O LATE P.BHASKARAN NAIR,**
**PROPRITRESS**
**EVERGREEN VEGETABLES, NARMADA COMPLEX**
**THIRUVANANTHAPURAM**

**BY ADV. SMT.A.G.ANEETHA**

**RESPONDENTS:**
**----------**
**1. APPELLATE AUTHORITY UNDER THE**
**SHOPS & COMMERCIAL ESTABLISHMENTS ACT 1960**
**AND DEPUTY LABOUR COMMISSIONER,**
**THIRUVANANHAPURAM**

**2. R.AMBIKA KUMARI,**
**NEERATHUMMOTTIL VEEDU**
**TC-4/749 KOWDIAR**
**THIRUVANANTHAPURAM**

**BY ADV. SRI.GOPAKUMAR R.THALIYAL**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON 09/03/2007 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of the Letter by the 2nd respondent to the petitioner's

Ext.P2: True copy of the complaint filed by the 2nd dated 25-11-1998

Ext.P3: True copy of the Evidence given by the 2nd respondent before the Workmen Compensation Commissioner Court, Thiruvananthapuram dated 18-4-2001

Ext.P4(a): True copy of the Order in S.A. 3/1999 dated 12-6-2001 issued by the first respondent

Ext.P4(b): True copy of the Intimation Letter in S.A. 3/1999 issued by the 1st respondent.

//True Copy//

es

**S.SIRI JAGAN .J**

---

**O.P No. 24078 of 2001**

---

**Dated this the 9th day of March 2007**

**JUDGMENT**

The petitioner is the opposite party- employer in Shop Appeal No.3/ 1999 before the Appellate Authority under the Shops and Commercial Establishments Act 1960 and Deputy Labour Commissioner Thiruvananthapuram The 2nd respondent was an employee working in the petitioner's shop. Alleging denial of employment, the 2nd respondent filed the Shop Appeal. In the Shop Appeal. the petitioner took a contention that the 2nd respondent committed misappropriation of an amount of Rs.10,000/- and when the same was found out, because of shame and inability to face others, the 2nd respodnent voluntarily abandoned employment. After sixteen days of alleged denial of employment the 2nd respondent approached the Appellate Authority by filing the said Shop Appeal. In that Shop Appeal the 1st respondent passed Ext.P4(a) order in which he found that the 2nd respondent was denied employment without any reasonable cause and held that the 2nd respondent is entitled to reinstatement in the establishment of the petitioner with all attendant benefits as if she continued in service without interruption. However invoking Section 18 (4) of the Kerala Shops and

Commercial Establishments Act 1960 the 1st respondent fixed Rs. 14,000/- as the compensation in view of reinstatement to be paid by the petitioner to the 2nd respondent in case the petitioner does not reinstate the 2nd respondent. Ext.P4(a) order and Ext.P4(b) intimation of order by the 1st respondent are under challenge in this writ petition.

2. The contention of the petitioner is that the petitioner had a consistent case that there was admission of guilt on the part of the 2nd respondent because of which she had voluntarily absented herself from work and therefore the impugned orders of the 1st respondent are patently illegal and unsustainable.

3. I have heard both sides. Before going into the rival contentions I must remind myself of the limitation of my jurisdiction under Article 226 in dealing with the challenge against the orders passed by the Appellate Authority under the Shops and Commercial Establishments Act. As in the case of awards in industrial disputes, this court can interfere with such orders only if the conclusion arrived at by the authority is demonstrably perverse or there is violation of principles of natural justice or other such illegalities. The petitioner does not allege any procedural irregularities in passing Ext.P4(a) order. Here the only contention is

regarding the findings of fact entered by the 1st respondent. As I have already stated such findings of fact can be interfered with by this Court under Article 226 only if the same is demonstrably perverse.

3. The contention of the petitioner is that the 2nd respondent committed misappropriation and left the shop . But it is in evidence that the petitioner first approached the Labour Officer and getting no favourable response from the Labour Officer she filed this Shop Appeal . She did it within 16 days of the alleged denial of employment. The petitioner was not able to produce any evidence to the effect that the 2nd respondent had in fact misappropriated Rs.10,000/- as alleged by her. In fact as against the evidence of the 2nd respondent as AW1, the petitioner has not even found it necessary to examine herself as a witness. She has only produced three documents which do not pertain to any misappropriation on the part of the 2nd respondent. The basis of the petitioner's contention that the 2nd respondent voluntarily did not come for work is that the 2nd respondent had misappropriated money from the petitioner's shop. Therefore unless the petitioner by some cogent evidence proves that the 2nd respondent had in fact misappropriated money, the other part of her contention cannot be believed for a moment. Since she was not

even prepared to go into the box to depose that The 2nd respondent had in fact misappropriated money and therefore she ceased to come for work out of shame, the version of the petitioner cannot be believed at all. That being so, I do not find any perversity whatsoever in the findings of the 1st respondent. The result of the above discussion is that the original petition is without any merit and accordingly the same is dismissed.

**S.SIRI JAGAN .JUDGE**

es